



OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Parts 9901 and 9903

Cost Accounting Standards: Change to the CAS Applicability Threshold for the Inflation Adjustment to the Truth in Negotiations Act Threshold

AGENCY: Office of Management and Budget (OMB), Office of Federal Procurement Policy, Cost Accounting Standards Board.

ACTION: Final rule.

SUMMARY: The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards (CAS) Board (Board), has adopted, without change from the interim rule, a final rule revising the threshold for the application of CAS from “\$650,000” to “the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation.” The change is being made because the CAS applicability threshold is statutorily tied to TINA threshold. The TINA threshold for obtaining cost or pricing data was recently adjusted for inflation to \$700,000 in the Federal Acquisition Regulation (FAR), as required by the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Until the interim change for this final rule, the CAS applicability threshold was a stated dollar amount (\$650,000) in the Code of Federal Regulations. This wording change effectively revised the CAS threshold to \$700,000 and will cause future changes to the CAS applicability threshold to self-execute upon any changes to the TINA threshold as they are implemented in the FAR.

EFFECTIVE DATE: [insert date of publication in the Federal Register].

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SUPPLEMENTARY INFORMATION:

A. Background and Summary

On July 12, 2011, the Cost Accounting Standards Board (Board) published an interim rule with a request for comment (76 FR 40817) for the purpose of revising the Cost Accounting Standards (CAS) applicability threshold in 48 CFR Chapter 99 from “\$650,000” to “the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908) and (41 U.S.C. 1502(b)(1)(B))”. This was done because of a recent increase to \$700,000 in the FAR to the Truth in Negotiations Act (TINA) threshold for the submission of cost or pricing data, as adjusted for inflation by section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375), as incorporated into Federal Acquisition Regulation (FAR) 15.403-4(a)(1) by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council on August 30, 2010 (at 75 FR 53129). By revising the CAS applicability threshold so that it directly referenced the FAR TINA threshold for the submission of cost or pricing data (rather than referencing a stated dollar amount), any future changes to the FAR TINA threshold will automatically apply to the CAS applicability threshold (thereby eliminating the need to revise this regulation to specify a different dollar amount).

Statutory Requirement for Inflation Adjustment of TINA Thresholds

Section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375) requires a periodic adjustment for inflation every five years to the acquisition related thresholds using the Consumer Price Index (CPI) for all urban consumers, except for the Davis-Bacon Act, Service Contract Act, and trade agreement thresholds. The threshold in TINA (10 U.S.C. 2306a(a)(1)(A)(i)) for the submission of cost or pricing data is one of the acquisition related thresholds adjusted for inflation by section 807. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) published a final rule in the *Federal Register* on August 30, 2010 (75 FR 53129) amending the FAR to implement section 807, including the TINA threshold at FAR 15.403-4, Requiring cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 3502 [formerly, 41 U.S.C. 254b]). This FAR final rule was effective October 1, 2010, and revised the FAR TINA threshold from \$650,000 to \$700,000.

Statutory Requirement for Threshold for CAS Applicability

Section 26(f)(2)(A) of the OFPP Act (41 U.S.C. 1502(b)(1)(B) [formerly, 41 U.S.C. 422(f)(2)(A)]) addresses the CAS applicability threshold. Section 822 of the 2006 National Defense Authorization Act (Pub. L. 109-163) amended 41 U.S.C. 1502(b)(1)(B) [formerly, 41 U.S.C. 422(f)(2)(A)] to tie the statutory CAS threshold to the threshold for compliance with the TINA requirement to submit cost or pricing data, as set forth in section 2306a(a)(1)(A)(i) of title 10, United States Code. The recent changes to the TINA threshold described above require identical changes to the CAS applicability

threshold (i.e., from \$650,000 to \$700,000). Until the interim rule for this final rule, the CAS applicability threshold has been identified in the CAS Board rules as a stated dollar amount. To avoid repeated rulemakings in the future that would update the stated dollar amount, in order to keep the CAS applicability threshold tied to the FAR TINA threshold, the Board revised the CAS applicability threshold from a stated dollar amount (which has been “\$650,000”) to “the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B)).” This revision made any future changes to the CAS applicability threshold self-executing upon any changes that the FAR makes to the FAR TINA threshold. Thus, because the FAR’s TINA threshold is now \$700,000, the CAS applicability threshold under this final rule will be \$700,000.

B. Public Comments

The Board received two sets of public comments in response to the Interim Rule.

1. Future changes to the FAR TINA threshold automatically applied to the CAS applicability threshold.

Comment: One respondent agreed with the interim rule stating “[t]his is a good step in streamlining the process (i.e., deleting the requirements for future interim and final CAS rules for TINA changes).” However, another respondent disagreed and thought that as a matter of policy, the CAS Board “should issue its own dollar applicability threshold(s)” because “effectively delegating the authority to establish the CAS contract applicability threshold” was “yet another weakening of the CAS Board’s basic authority.”

Response: The CAS Board agrees with the comment that supports the interim rule and disagrees with the comment to the contrary. The CAS Board does not see making

this change as a weakening of the CAS Board’s authority. The change is consistent with the CAS statutory authority at 41 U.S.C. 1502(b)(1)(B) which provides that CAS “are mandatory for use by all executive agencies and by contractors and subcontractors ... concerning, all negotiated prime contract and subcontract procurements with the Federal Government in excess of the amount set forth in section 2306a(a)(1)(A)(i) of title 10 [i.e., the Truth in Negotiations Act (TINA)] as the amount is adjusted in accordance with applicable requirements of law.” 41 U.S.C. 1908 provides for the inflation adjustment of acquisition-related dollar, including TINA, by the Federal Acquisition Regulatory Council.

2. The phrase “as adjusted for inflation” is unnecessary.

Comment: One respondent opined that the phrase “as adjusted for inflation” “is both unnecessary and redundant.”

Response: The CAS Board does not agree. The text is consistent with the CAS statutory authority at 41 U.S.C. 1502(b)(1)(B). See the Response to Comment 1.

3. Changes to FAR Parts 30 and 52 required to be made for the changes to the CAS applicability threshold.

Comment: One respondent noted that “FAR Part 30 and the [CAS] clauses at FAR 52.230 [et seq.] continue to reference the \$650,000 which is now outdated.” The respondent acknowledged that the FAR is the responsibility of the FAR Council, rather than the CAS Board.

Response: The changes to the FAR to reflect the CAS Board’s interim and final rules are beyond the authority of the CAS Board as acknowledged by the respondent. The

comments have been sent to the OFPP Administrator, the Chair of the FAR Council, for implementation in the FAR.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35, Subtitle I) does not apply to this rulemaking because this rule imposes no additional paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, et seq. The records required by this final rule are those normally maintained by contractors and subcontractors who claim reimbursement of costs under government contracts.

D. Executive Order 12866, the Congressional Review Act, and the Regulatory Flexibility Act

Because the affected contractors and subcontractors are those who are already subject to CAS but for the increase in the CAS applicability threshold, the economic impact of this final rule on contractors and subcontractors is expected to be minor. As a result, the Board has determined that this final rule will not result in the promulgation of an “economically significant rule” under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. For the same reason, the Administrator of the Office of Information and Regulatory Affairs has determined that this final rule is not a “major rule” under the Congressional Review Act, 5 U.S.C. Chapter 8. Finally, this final rule does not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the

Cost Accounting Standards. Therefore, this final rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980, 5 U.S.C. Chapter 6.

List of Subjects in 48 CFR Parts 9901 and 9903

Government Procurement, Cost Accounting Standards.

Daniel I. Gordon
Chair, Cost Accounting Standards Board

For the reasons set forth in this preamble, the interim rule published at 76 FR 40817, July 12, 2011, amending Chapter 99 of Title 48 of the Code of Federal Regulations, is adopted as final without change.

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